

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 784

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO TAXATION; PROVIDING CORPORATE AND PERSONAL INCOME
TAX CREDITS FOR BIOGAS FUEL PRODUCTION FACILITIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Income Tax Act is enacted
to read:

"~~[NEW MATERIAL]~~ BIOGAS FUEL PRODUCTION INCOME TAX
CREDIT.--

A. The tax credit provided in this section may be
referred to as the "biogas fuel production income tax credit".

B. A taxpayer who holds an interest in a qualified
biogas fuel production facility in New Mexico and who files an
individual New Mexico income tax return may claim a biogas fuel
production income tax credit in an amount equal to two dollars
ninety-two cents (\$2.92) for every one million British thermal

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underscoring material = new
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1 units of biogas produced by the facility, subject to the
2 limitations imposed in this section.

3 C. Any person holding an interest in a biogas fuel
4 production facility may request certification of eligibility
5 for the biogas fuel production income tax credit from the
6 energy, minerals and natural resources department. The energy,
7 minerals and natural resources department shall determine if
8 the facility is a qualified biogas fuel production facility and
9 the annual production potential of the facility, which shall be
10 the limit of that facility's biogas fuel production eligible
11 for the tax credit for the taxable year. The energy, minerals
12 and natural resources department may estimate the annual biogas
13 fuel production potential of a facility for the purposes of
14 this section. The energy, minerals and natural resources
15 department may certify the eligibility of a qualified biogas
16 fuel production facility only if the total amount of biogas
17 fuel that is produced annually by all qualified biogas fuel
18 production facilities that are certified pursuant to this
19 section and pursuant to the Corporate Income and Franchise Tax
20 Act will not exceed a total of one million seven hundred fifty
21 thousand million British thermal units. If the requirements of
22 this subsection are satisfied, the energy, minerals and natural
23 resources department shall issue a certificate to the applicant
24 stating that the facility in which the applicant holds an
25 interest is a qualified biogas fuel production facility, and

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1 stating the maximum amount of biogas fuel production income tax
2 credit for which the facility is eligible for the taxable year.

3 D. A taxpayer may be allocated all or a portion of
4 the right to claim a biogas fuel production income tax credit
5 without regard to proportional ownership interest if:

6 (1) the taxpayer owns an interest in a
7 business entity that is taxed for federal income tax purposes
8 as a partnership;

9 (2) the business entity:

10 (a) would qualify for the biogas fuel
11 production income tax credit;

12 (b) owns an interest in a business
13 entity that is also taxed for federal income tax purposes as a
14 partnership and that would qualify for the biogas fuel
15 production income tax credit; or

16 (c) owns, through one or more
17 intermediate business entities that are each taxed for federal
18 income tax purposes as a partnership, an interest in the
19 business entity described in Subparagraph (b) of this
20 paragraph;

21 (3) the taxpayer and all other taxpayers
22 allocated a right to claim the biogas fuel production income
23 tax credit pursuant to this subsection own collectively at
24 least a five percent interest in the biogas fuel production
25 facility;

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1 (4) the total of all of the allocated rights
2 to claim the biogas fuel production income tax credit with
3 respect to a biogas fuel production facility do not exceed one
4 hundred percent of the amount of biogas fuel production income
5 tax credit for which the facility is eligible for the taxable
6 year;

7 (5) the business entity provides notice to the
8 taxation and revenue department, in a format prescribed by the
9 department, of the allocation to the taxpayer of all or a
10 portion of the right to claim the biogas fuel production income
11 tax credit; and

12 (6) the taxation and revenue department
13 acknowledges in writing the allocation to the taxpayer.

14 E. A taxpayer may claim the biogas fuel production
15 income tax credit by submitting with the taxpayer's New Mexico
16 income tax return the certificate of eligibility issued by the
17 energy, minerals and natural resources department pursuant to
18 Subsection C of this section, documentation of the taxpayer's
19 interest in the facility, the acknowledgment by the taxation
20 and revenue department pursuant to Subsection D of this section
21 of the amount of the credit allocated to the taxpayer, if
22 applicable, and any other information the taxation and revenue
23 department may require to determine the amount of the tax
24 credit due the taxpayer.

25 F. If the requirements of this section have been

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1 complied with, the department shall approve the biogas fuel
2 production income tax credit; provided that the total credit
3 approved for all taxpayers for a taxable year with respect to a
4 qualified biogas fuel production facility shall not exceed the
5 maximum amount certified by the energy, minerals and natural
6 resources department with respect to that facility; and
7 provided that the total amount of biogas with respect to which
8 a biogas fuel production income tax credit or a biogas fuel
9 production corporate income tax credit is approved in a taxable
10 year will not exceed a total of one million seven hundred fifty
11 thousand million British thermal units. The biogas fuel
12 production income tax credit may be deducted from a taxpayer's
13 New Mexico income tax liability for the taxable year for which
14 the credit is claimed. If the amount of tax credit exceeds the
15 taxpayer's income tax liability for the taxable year, the
16 excess may be carried forward for a period of ten taxable
17 years. The biogas fuel production income tax credit is not
18 refundable.

19 G. Once a taxpayer has been granted a biogas fuel
20 production income tax credit for a given facility, that
21 taxpayer shall be allowed to keep the facility's original date
22 of application for tax credits for that facility until either
23 the facility goes out of production for six months or the
24 facility's ten-year eligibility has expired.

25 H. A husband and wife who file separate returns for

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1 a taxable year in which they could have filed a joint return
2 may each claim only one-half of the biogas fuel production
3 income tax credit that would have been allowed on a joint
4 return.

5 I. A taxpayer claiming the biogas fuel production
6 income tax credit pursuant to this section is ineligible for
7 any other credit pursuant to the Income Tax Act or the
8 Corporate Income and Franchise Tax Act with respect to the same
9 biogas fuel production facility.

10 J. As used in this section:

11 (1) "biogas" means a gas that is derived by
12 processing a qualified energy source and that contains at least
13 fifty percent methane;

14 (2) "qualified biogas fuel production
15 facility" means a facility located in New Mexico that begins
16 production between July 1, 2011 and July 1, 2013 and:

17 (a) uses anaerobic digesters,
18 gasification or other biological, chemical or thermal processes
19 to convert a qualified energy source into biogas; and

20 (b) the biogas output of which is: 1)
21 marketed through interconnection with a natural gas
22 distribution or transmission pipeline; or 2) reasonably
23 expected to be used in a quantity sufficient to offset the
24 consumption of five thousand million British thermal units
25 annually of commercially marketed fuel derived from coal, crude

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1 oil, natural gas, propane or other fossil fuels;

2 (3) "qualified energy source" means:

3 (a) manure of agricultural livestock,
 4 including litter, wood shavings, straw, rice hulls, bedding
 5 material and other materials incidentally collected with the
 6 manure; or

7 (b) any nonhazardous, cellulosic or
 8 other organic agricultural or food industry byproduct or waste
 9 material that is derived from renewable biomass, wastes or
 10 byproducts from fermentation processes, ethanol production,
 11 biodiesel production, slaughter of agricultural livestock, food
 12 production, food processing or food service, or other organic
 13 wastes, byproducts or sources, but does not include methane
 14 collected in or from landfills or landfill waste; and

15 (4) "renewable biomass" means feed grains,
 16 other agricultural commodities, algae or waste material, such
 17 as crop residue, animal waste and byproducts, including fats,
 18 oils and greases, and food waste."

19 Section 2. A new section of the Corporate Income and
 20 Franchise Tax Act is enacted to read:

21 "[NEW MATERIAL] BIOGAS FUEL PRODUCTION CORPORATE INCOME
 22 TAX CREDIT.--

23 A. The tax credit provided in this section may be
 24 referred to as the "biogas fuel production corporate income tax
 25 credit".

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1 B. A taxpayer that holds an interest in a qualified
2 biogas fuel production facility in New Mexico and that files a
3 New Mexico corporate income tax return may claim a biogas fuel
4 production corporate income tax credit in an amount equal to
5 two dollars ninety-two cents (\$2.92) for every one million
6 British thermal units of biogas produced by the facility,
7 subject to the limitations imposed in this section.

8 C. Any person holding an interest in a biogas fuel
9 production facility may request certification of eligibility
10 for the biogas fuel production corporate income tax credit from
11 the energy, minerals and natural resources department. The
12 energy, minerals and natural resources department shall
13 determine if the facility is a qualified biogas fuel production
14 facility and the annual production potential of the facility,
15 which shall be the limit of that facility's biogas fuel
16 production eligible for the tax credit for the taxable year.
17 The energy, minerals and natural resources department may
18 estimate the annual biogas fuel production potential of a
19 facility for the purposes of this section. The energy,
20 minerals and natural resources department may certify the
21 eligibility of a qualified biogas fuel production facility only
22 if the total amount of biogas fuel that is produced annually by
23 all qualified biogas fuel production facilities that are
24 certified pursuant to this section and pursuant to the Income
25 Tax Act will not exceed a total of one million seven hundred

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1 fifty thousand million British thermal units. If the
2 requirements of this subsection are satisfied, the energy,
3 minerals and natural resources department shall issue a
4 certificate to the applicant stating that the facility in which
5 the applicant holds an interest is a qualified biogas fuel
6 production facility, and stating the maximum amount of biogas
7 fuel production corporate income tax credit for which the
8 facility is eligible for the taxable year.

9 D. A taxpayer may be allocated all or a portion of
10 the right to claim a biogas fuel production corporate income
11 tax credit without regard to proportional ownership interest
12 if:

13 (1) the taxpayer owns an interest in a
14 business entity that is taxed for federal corporate income tax
15 purposes as a partnership;

16 (2) the business entity:

17 (a) would qualify for the biogas fuel
18 production corporate income tax credit;

19 (b) owns an interest in a business
20 entity that is also taxed for federal corporate income tax
21 purposes as a partnership and that would qualify for the biogas
22 fuel production corporate income tax credit; or

23 (c) owns, through one or more
24 intermediate business entities that are each taxed for federal
25 corporate income tax purposes as a partnership, an interest in

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1 the business entity described in Subparagraph (b) of this
2 paragraph;

3 (3) the taxpayer and all other taxpayers
4 allocated a right to claim the biogas fuel production corporate
5 income tax credit pursuant to this subsection own collectively
6 at least a five percent interest in the biogas fuel production
7 facility;

8 (4) the total of all of the allocated rights
9 to claim the biogas fuel production corporate income tax credit
10 with respect to a biogas fuel production facility do not exceed
11 one hundred percent of the amount of biogas fuel production
12 corporate income tax credit for which the facility is eligible
13 for the taxable year;

14 (5) the business entity provides notice to the
15 taxation and revenue department, in a format prescribed by the
16 department, of the allocation to the taxpayer of all or a
17 portion of the right to claim the biogas fuel production
18 corporate income tax credit; and

19 (6) the taxation and revenue department
20 acknowledges in writing the allocation to the taxpayer.

21 E. A taxpayer may claim the biogas fuel production
22 corporate income tax credit by submitting with the taxpayer's
23 New Mexico corporate income tax return the certificate of
24 eligibility issued by the energy, minerals and natural
25 resources department pursuant to Subsection C of this section,

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1 documentation of the taxpayer's interest in the facility, the
2 acknowledgment by the taxation and revenue department pursuant
3 to Subsection D of this section of the amount of the credit
4 allocated to the taxpayer, if applicable, and any other
5 information the taxation and revenue department may require to
6 determine the amount of the tax credit due the taxpayer.

7 F. If the requirements of this section have been
8 complied with, the department shall approve the biogas fuel
9 production corporate income tax credit; provided that the total
10 credit approved for all taxpayers for a taxable year with
11 respect to a qualified biogas fuel production facility shall
12 not exceed the maximum amount certified by the energy, minerals
13 and natural resources department with respect to that facility;
14 and provided that the total amount of biogas with respect to
15 which a biogas fuel production corporate income tax credit or a
16 biogas fuel production income tax credit is approved in a
17 taxable year will not exceed a total of one million seven
18 hundred fifty thousand million British thermal units. The
19 biogas fuel production corporate income tax credit may be
20 deducted from a taxpayer's New Mexico corporate income tax
21 liability for the taxable year for which the credit is claimed.
22 If the amount of tax credit exceeds the taxpayer's corporate
23 income tax liability for the taxable year, the excess may be
24 carried forward for a period of ten taxable years. The biogas
25 fuel production corporate income tax credit is not refundable.

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1 G. Once a taxpayer has been granted a biogas fuel
2 production corporate income tax credit for a given facility,
3 that taxpayer shall be allowed to keep the facility's original
4 date of application for tax credits for that facility until
5 either the facility goes out of production for six months or
6 the facility's ten-year eligibility has expired.

7 H. A taxpayer claiming the biogas fuel production
8 corporate income tax credit pursuant to this section is
9 ineligible for any other credit pursuant to the Corporate
10 Income and Franchise Tax Act or the Income Tax Act with respect
11 to the same biogas fuel production facility.

12 I. As used in this section:

13 (1) "biogas" means a gas that is derived by
14 processing a qualified energy source and that contains at least
15 fifty percent methane;

16 (2) "qualified biogas fuel production
17 facility" means a facility located in New Mexico that begins
18 production between July 1, 2011 and July 1, 2013 and:

19 (a) uses anaerobic digesters,
20 gasification or other biological, chemical or thermal processes
21 to convert a qualified energy source into biogas; and

22 (b) the biogas output of which is: 1)
23 marketed through interconnection with a natural gas
24 distribution or transmission pipeline; or 2) reasonably
25 expected to be used in a quantity sufficient to offset the

1 consumption of five thousand million British thermal units
2 annually of commercially marketed fuel derived from coal, crude
3 oil, natural gas, propane or other fossil fuels;

4 (3) "qualified energy source" means:

5 (a) manure of agricultural livestock,
6 including litter, wood shavings, straw, rice hulls, bedding
7 material and other materials incidentally collected with the
8 manure; or

9 (b) any nonhazardous, cellulosic or
10 other organic agricultural or food industry byproduct or waste
11 material that is derived from renewable biomass, wastes or
12 byproducts from fermentation processes, ethanol production,
13 biodiesel production, slaughter of agricultural livestock, food
14 production, food processing or food service, or other organic
15 wastes, byproducts or sources, but does not include methane
16 collected in or from landfills or landfill waste; and

17 (4) "renewable biomass" means feed grains,
18 other agricultural commodities, algae or waste material, such
19 as crop residue, animal waste and byproducts, including fats,
20 oils and greases, and food waste."

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